

1 (Counsel listed on signature page)

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12 IN RE: APPLICATION OF PHILIP
13 MORRIS PRODUCTS S.A. and
14 NICOCIGS LIMITED FOR
15 ISSUANCE OF SUBPOENAS TO
16 FONTEM HOLDINGS 1 B.V.,
17 FONTEM VENTURES B.V., NJOY,
18 INC. and SPARK INDUSTRIES, LLC.

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NOTE CHANGES MADE BY THE COURT.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:16-mc-00005-PA-AGR

~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER

Hon. Alicia G. Rosenberg

NOTE CHANGES MADE BY THE COURT.

[PROPOSED] STIPULATED
PROTECTIVE ORDER

1 WHEREAS, Philip Morris Products S.A. ("PMPSA") and Nicocigs Limited
2 ("Nicocigs") (together, the "Applicants") filed an application pursuant to 28 U.S.C.
3 §1782 (the "Action") seeking leave to obtain documents for use in the following
4 proceedings against Fontem Holdings 1 B.V. and Fontem Ventures B.V. (together
5 "Fontem"):

- 6 • PMPSA's opposition proceeding in the European Patent Office seeking
7 to invalidate Patent EP 2 022 349, and including any appeals and
8 petitions related to this action (the "EPO Proceeding"); and
- 9 • *Nicocigs Ltd. v. Fontem Holdings 1 BV and Fontem Ventures BV*
10 brought in the High Court of Justice of England and Wales under the
11 case number HP-2015-000027, and including any appeals related to
12 this action (the "UK Proceeding").

13 WHEREAS, by Order dated May 19, 2016 (Dkt. No. 38), the Court amended
14 *nunc pro tunc* the Applicants' document subpoenas to Fontem to be directed to the
15 Custodian of Records for Perkins Coie LLP ("Custodian");

16 WHEREAS, by the same Order, the Court ordered the parties to file a
17 stipulation for protective order to govern Fontem's production of documents in this
18 Action;

19 WHEREAS, the Parties to this Action could be prejudiced by the
20 dissemination of certain confidential, sensitive, proprietary information, and trade
21 secrets, as set forth herein; and

22 WHEREAS, this Proposed Order does not confer blanket protection on all
23 disclosures and discovery responses, but instead affords protection only to the
24 information and items that are entitled to confidential treatment under applicable
25 legal principles;

26 IT IS HEREBY STIPULATED AND AGREED, by and among the
27 Applicants on the one hand, and Fontem and Custodian on the other hand, (each

1 individually, a "Party" and collectively, the "Parties"), that this Stipulation and
2 Protective Order shall govern the handling of documents, depositions, pleadings,
3 exhibits, and all other information exchanged by the Parties (collectively the
4 "Discovery Material") in this Action for use in the UK Proceeding and the EPO
5 Proceeding.

6 **Good Cause Statement**

7 1. Consistent with Federal Rule of Civil Procedure 26(c), good cause
8 exists for the Court to enter this Protective Order with respect to the items
9 identified in paragraphs 2-3 below because the Parties could be prejudiced by
10 the dissemination of such confidential, sensitive, proprietary information, and
11 trade secrets.

12 **Designation of Discovery Materials as "CONFIDENTIAL"**
13 **or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"**

14 2. The Parties shall have the right to designate as "CONFIDENTIAL" and
15 subject to this Stipulation and Protective Order the following categories of
16 information and Discovery Material:

17 (a) confidential and non-public proprietary technical or scientific
18 information;

19 (b) confidential and non-public know-how;

20 (c) confidential, proprietary or sensitive business or financial
21 information;

22 (d) confidential and non-public product research and development
23 information;

24 (e) confidential and non-public customer and supplier information
25 that is the property of Fontem;

26 (f) confidential and non-public marketing strategies and
27 information;

1 (g) confidential and non-public strategic business information
2 including without limitation business plans, manufacturing information, cost
3 information or logistical information;

4 (h) any information which is not generally known and which the
5 Designating Party would not normally reveal to third parties or would cause
6 third parties to maintain in confidence; and

7 (i) confidential information of a non-party that the Producing Party
8 is bound by a separate confidentiality agreement or court order to maintain in
9 confidence and that the Producing Party is permitted to produce in the Action.

10 3. The Parties shall have the right to designate as "HIGHLY
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY" (and similar
12 designations, such as "HIGHLY CONFIDENTIAL," "ATTORNEYS' EYES
13 ONLY," "AEO") and subject to this Stipulation and Protective Order the
14 following categories of information and Discovery Material produced by a
15 Party that contains highly confidential and proprietary information, including:

16 (a) information that constitutes a protectable trade secret as defined
17 in Cal. Civ. Code § 3426.1(d), and potentially may include highly confidential
18 customer lists, pricing analysis and information, market surveys and
19 competitive research, corporate financial information and analysis, business
20 strategies, and information related to product development, research and
21 releases;

22 (b) draft patent applications, invention disclosures, and other
23 information relating to the filing and preparation of patent applications;

24 (c) highly confidential research and experimental testing
25 information;
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1 (d) highly confidential information that the Producing Party in good
2 faith believes disclosure to a competitor or to the public could have a
3 significant adverse business or competitive impact; and/or

4 (e) any patent license agreements, settlement agreements, or any
5 documents concerning the proposed terms and negotiations of any such
6 agreements.

7 4. The categories of documents listed in paragraphs 2 and 3 above are
8 merely exemplary. Further, the exemplary categories do not per se constitute
9 CONFIDENTIAL or ATTORNEYS' EYES ONLY DISCOVERY
10 MATERIAL.

11 5. For information in documentary form (e.g., paper or electronic
12 documents, but excluding transcripts of depositions or other pretrial or trial
13 proceedings), the designation of Discovery Material as "CONFIDENTIAL"
14 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" shall be
15 made by stamping each page of the document containing such information
16 with the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
17 ATTORNEYS' EYES ONLY" (or similar designations, such as "HIGHLY
18 CONFIDENTIAL," "ATTORNEYS' EYES ONLY," "AEO") prior to its
19 production. For information produced in electronic form, the designation of
20 Discovery Material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
21 ATTORNEYS' EYES ONLY" shall be made by stamping a slip sheet
22 corresponding to the document produced in electronic form with the legend
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
24 EYES ONLY" (or similar designations, such as "HIGHLY
25 CONFIDENTIAL," "ATTORNEYS' EYES ONLY," "AEO"), or by
26 including "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
27 ATTORNEYS' EYES ONLY" (or similar designations, such as "HIGHLY

1 CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” “AEO,”) in the file
2 name of the electronic document. Discovery Material may also be designated
3 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
4 EYES ONLY” by any other method agreed to in writing by counsel for the
5 Parties.

6 6. For testimony given in deposition, the Designating Party may identify
7 on the record, before the close of the deposition, all protected testimony and
8 specify the level of protection being asserted (“CONFIDENTIAL” or
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). When it is
10 impractical to identify separately each portion of testimony that is entitled to
11 protection at the deposition and it appears that substantial portions of the
12 testimony may qualify for protection, the Designating Party may identify the
13 specific portions of the testimony as to which protection is sought and to
14 specify the level of protection being asserted by providing notice in writing to
15 all parties within 30 days of receipt of the final transcript of the deposition.
16 Only those portions of the testimony that are appropriately designated for
17 protection within the 30 days shall be covered by the provisions of this
18 Stipulated Protective Order.

19 7. Transcripts containing Discovery Material as “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall have an
21 obvious legend on the title page that the transcript contains
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
23 EYES ONLY” (or similar designations, such as “HIGHLY
24 CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” “AEO”) information,
25 and the title page shall be followed by a list of all pages (including line
26 numbers as appropriate) that have been designated and the level of protection
27 being asserted by the Designating Party. The Designating Party shall inform

1 the court reporter of these requirements. Any transcript that is prepared before
2 the expiration of the 30-day period for designation shall be treated during that
3 period as if it had been designated "HIGHLY CONFIDENTIAL –
4 ATTORNEYS' EYES ONLY" in its entirety unless otherwise agreed by the
5 Parties. After the expiration of that period, the transcript shall be treated only
6 as actually designated.

7 8. Any notes, summaries, compilations, or copies containing
8 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
9 EYES ONLY" information or electronic images or databases containing
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
11 EYES ONLY" information shall be subject to the terms of this Protective
12 Order to the same extent as the material or information from which such
13 notes, summaries, compilations, copies, electronic images, or databases is
14 made or derived.

15 9. Inadvertent failure to designate any information as "CONFIDENTIAL"
16 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to
17 this Protective Order shall not constitute a waiver of any otherwise valid
18 claim for protection.

19 10. The production of Discovery Material which a Party or non-party later
20 claims should not have been produced because of a privilege or protection
21 from discovery, including but not limited to the attorney-client privilege,
22 work product privilege and/or joint defense privilege ("Inadvertently
23 Produced Protected Material") will not be deemed to waive any privileges.
24 Consistent with Fed. R. Civ. P. 26(b)(5)(B), a Party or nonparty may notify
25 the Receiving Party of any Inadvertently Produced Protected Material and the
26 basis for withholding such material. After being notified, the Receiving Party
27 must promptly return, sequester, or destroy the specified information and any

1 copies it has; must not use or disclose the information until the claim is
2 resolved; must take reasonable steps to retrieve the information if the party
3 disclosed it before being notified; and may promptly present the information
4 under seal to the Court in this Action for a determination of the claim. The
5 producing party must preserve the information until the claim is resolved. If a
6 Receiving Party receives Discovery Material that the Receiving Party believes
7 may be Inadvertently Produced Protected Material, it shall notify the
8 Producing Party promptly after it is discovered that the Discovery Protected
9 Material may have been inadvertently or unintentionally produced. No one
10 will use the fact of production of a document over which the producing party
11 later asserts privilege to argue that the inadvertent production in and of itself
12 waives privilege.

13 **Limitation on Use of Designated Information**

14 11. Each Party and all persons bound by the terms of this Stipulation and
15 Protective Order shall use any information or Discovery Material designated
16 as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
17 EYES ONLY" governed by this Stipulation and Protective Order only for the
18 purpose of the prosecution or defense of the claims asserted in the UK
19 Proceeding, the EPO Proceeding, or in connection with this Action. No Party
20 or other person shall use, disclose, or release any such information or
21 Discovery Material governed by this Stipulation and Protective Order for any
22 purpose other than the prosecution or defense of said claims. The attorneys of
23 record for the Parties and other persons receiving such information governed
24 by this Stipulation and Protective Order shall take all reasonable steps to
25 ensure that such information and Discovery Material governed by this
26 Stipulation and Protective Order are (i) used only for the purposes specified
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1 herein; and (ii) disclosed only to authorized persons. Nothing herein shall be
2 construed to limit in any way any Party's use of its own information.

3 **Restrictions on Disclosure of Materials Designated**

4 **"CONFIDENTIAL"**

5 12. Except as otherwise provided by written stipulation of the Parties or by
6 order of the Court, information and Discovery Material designated
7 "CONFIDENTIAL" shall not be disclosed to or discussed with any person
8 except:

9 (a) the Parties, including their present officers, directors, partners, or
10 employees, only to the extent reasonably necessary and only for the purpose
11 of conducting or assisting in the UK Proceeding, EPO Proceeding, or this
12 Action;

13 (b) the Parties' outside counsel of record in the UK Proceeding, EPO
14 Proceeding, and this Action, the partners, members, associates, and
15 employees of such counsel, and their authorized secretarial and paralegal
16 staffs, only to the extent reasonably necessary and only for the purpose of
17 conducting or assisting in the UK Proceeding, EPO Proceeding, or this
18 Action;

19 (c) in-house counsel to the Parties and employees of such counsel,
20 and their authorized secretarial and paralegal staffs, only to the extent
21 reasonably necessary and only for the purpose of conducting or assisting in
22 the UK Proceeding, EPO Proceeding, or this Action,

23 (d) the Court and court personnel, deposition officers, court
24 reporters, and videographers used in connection with the UK Proceeding,
25 EPO Proceeding, or this Action;

1 (e) employees of outside copying, printing, binding, e-discovery
2 database host vendors, third-party document reviewers, or computer input
3 services;

4 (f) persons who have been retained by any Party (or by its attorneys
5 of record) for the purpose of assisting in the UK Proceeding or EPO
6 Proceeding as outside consultants or experts, only to the extent reasonably
7 necessary and only for the purpose of conducting or assisting in the UK
8 Proceeding or the EPO Proceeding and who have signed the certification in
9 the form of Exhibit A attached hereto;

10 (g) such other persons as the Parties may agree or may be ordered by
11 the Court, and who have signed the certification in the form of Exhibit A
12 attached hereto.

13 13. If only a portion of a document or other Discovery Material designated
14 by a Party as "CONFIDENTIAL" reflects confidential and proprietary
15 information as described in paragraph 2 hereof, the designating Party shall,
16 upon a reasonable request, produce a non-"CONFIDENTIAL" version of the
17 document or other Discovery Material with only the confidential and
18 proprietary information redacted. If the Parties are unable to agree upon
19 whether the redacted portions of any such document or Discovery Material
20 are appropriately designated as "CONFIDENTIAL," the Parties may seek a
21 determination by the Court as provided herein. This process is limited to
22 circumstances when the Applicants wish to show or file specific redacted
23 "CONFIDENTIAL" documents to or in the EPO.

24 **Restrictions on Disclosure of Discovery Designated**

25 **"ATTORNEYS' EYES ONLY"**

26 14. Except as otherwise provided by written stipulation of the Parties or by
27 order of the Court, information and Discovery Material designated "HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall not be disclosed or
2 discussed with any person except, on a need-to-know basis:

3 (a) the Parties’ outside counsel of record in the UK Proceeding, EPO
4 Proceeding, or this Action, the partners, members, associates, and employees
5 of such counsel, and their authorized secretarial and paralegal staffs, only to
6 the extent reasonably necessary and only for the purpose of conducting or
7 assisting in the UK Proceeding, EPO Proceeding, or this Action;

8 (b) subject to paragraphs 17-19, a single in-house counsel to the
9 Applicants responsible for the UK Proceeding and a single in-house counsel
10 to Applicants responsible for the EPO Proceeding, only to the extent
11 reasonably necessary and only for the purpose of conducting or assisting in
12 the UK Proceeding, EPO Proceeding, or this Action. Except, no in-house
13 counsel will have access to documents further designated “OUTSIDE
14 COUNSEL’S EYES ONLY” including any patent license agreements,
15 settlement agreements, or any documents concerning the proposed terms and
16 negotiations of any such agreements. Applicants’ in-house counsel identified
17 herein will not store or retain any documents marked “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (or similar designations,
19 such as “HIGHLY CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,”
20 “AEO”) in a location that is accessible by any individual prohibited from
21 access to those documents pursuant to this Stipulation and Protective Order
22 and will not print download or otherwise retain copies of the documents;

23 (c) the Court and court personnel, deposition officers, court
24 reporters, and videographers used in connection with the UK Proceeding,
25 EPO Proceeding, or this Action;
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1 (d) employees of outside copying, printing, binding, e-discovery
2 database host vendors, third-party document reviewers, or computer input
3 services;

4 (e) subject to Paragraphs 20-22, persons who have been retained by
5 any Party (or by its attorneys of record) for the purpose of assisting in the UK
6 Proceeding or EPO Proceeding as outside consultants or experts, only to the
7 extent reasonably necessary and only for the purpose of conducting or
8 assisting in the UK Proceeding or the EPO Proceeding, and who have signed
9 the certification in the form of Exhibit A attached hereto;

10 (f) such other persons as the Parties may agree or may be ordered by
11 the Court, and who have signed the certification in the form of Exhibit A
12 attached hereto.

13 15. If only a portion of a document or other Discovery Material designated
14 by a Party as "ATTORNEYS' EYES ONLY" reflects highly confidential and
15 proprietary information as described in paragraph 3 hereof, the designating
16 Party shall, upon request, produce a non-"CONFIDENTIAL" version of the
17 document or other Discovery Material with only the confidential and
18 proprietary information redacted. If the Parties are unable to agree upon
19 whether the redacted portions of any such document or Discovery Material
20 are appropriately designated as "HIGHLY CONFIDENTIAL –
21 ATTORNEYS' EYES ONLY," the Parties may seek a determination by the
22 Court as provided herein. This process is limited to circumstances when the
23 Applicants wish to show or file specific redacted "HIGHLY
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY" documents to or in the
25 EPO.
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Certification of Persons to Whom Discovery Materials are Disclosed

16. Any signed and completed certifications in the form of Exhibit A attached hereto shall be retained by the attorneys of record for the disclosing Party. The Party securing such certification shall take reasonable steps to ensure that such persons signing such certifications observe the terms of this Stipulation and Protective Order. Upon a showing of good cause (e.g., knowledge of any improper disclosure of Discovery Material designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”), the Party retaining such certifications shall provide all certifications it has retained to the designating Party.

Procedures for Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information to In-House Counsel

17. Unless otherwise ordered by the Court or agreed to in writing by the Designating Party, a Party that seeks to disclose to a single in-house counsel to the Applicants responsible for the UK Proceeding and/or a single in-house counsel to Applicants responsible for the EPO Proceeding of any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the in-house counsel, (2) sets forth the full name and job title of the in-house counsel, (3) and such counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine present or potential involvement in any competitive-decision making.

18. A Party that makes a request and provides the information specified in the preceding respective paragraph may disclose the subject Protected

1 Material to the identified outside consultant or expert unless, within 10 days
2 of delivering the request, the Party receives a written objection from the
3 Designating Party. Any such objection must be made in good faith and must
4 set forth in detail the grounds on which it is based.

5 19. A Party that receives a timely written objection must meet and confer
6 with the Designating Party (through direct voice to voice dialogue) to try to
7 resolve the matter by agreement within seven days of the written objection. If
8 no agreement is reached, the Party seeking to make the disclosure to the in-
9 house counsel must seek a discovery conference with the Court for resolution
10 of the dispute. Any such request for a discovery conference must describe the
11 circumstances with specificity, set forth in detail the reasons why the
12 disclosure to the in-house counsel is reasonably necessary, assess the risk of
13 harm that the disclosure would entail, and suggest any additional means that
14 could be used to reduce that risk. In addition, any such request must be
15 accompanied by a competent declaration describing the Parties' efforts to
16 resolve the matter by agreement (i.e., the extent and the content of the meet
17 and confer discussions) and setting forth the reasons advanced by the
18 Designating Party for its refusal to approve the disclosure.

19 **Procedures for Disclosure of**

20 **"HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"**

21 **Information to Outside Consultants or Experts**

22 20. Unless otherwise ordered by the Court or agreed to in writing by the
23 Designating Party, a Party that seeks to disclose to an outside consultant or
24 expert any information or item that has been designated "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY" first must make a written
26 request to the Designating Party that (1) identifies the general categories of
27 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information

1 that the Receiving Party seeks permission to disclose to the outside consultant
2 or expert, (2) sets forth the full name of the outside consultant or expert and
3 the city and state of his or her primary residence, (3) attaches a copy of the
4 outside consultant or expert current resume, (4) identifies the outside
5 consultant or expert's current employer(s), (5) identifies each person or entity
6 from whom the outside consultant or expert has received compensation or
7 funding for work in his or her areas of expertise or to whom the expert has
8 provided professional services, including in connection with a litigation, at
9 any time during the preceding four years, and (6) identifies (by name and
10 number of the case, filing date, and location of court) any litigation in
11 connection with which the outside consultant or expert has offered expert
12 testimony.

13 21. A Party that makes a request and provides the information specified in
14 the preceding respective paragraph may disclose the subject Protected
15 Material to the identified outside consultant or expert unless, within 10 days
16 of delivering the request, the Party receives a written objection from the
17 Designating Party. Any such objection must set forth in detail the grounds on
18 which it is based. The Designating Party shall not assert an objection
19 providing the expert is independent (i.e. not presently or within the last four
20 years employed by or working as a consultant (outside of these litigations) for
21 a Party or a direct competitor of a Party.

22 22. A Party that receives a timely written objection must meet and confer
23 with the Designating Party (through direct voice to voice dialogue) to try to
24 resolve the matter by agreement within seven days of the written objection. If
25 no agreement is reached, the Party seeking to make the disclosure to the
26 outside consultant or expert may request a discovery conference with the
27 Court for resolution of the dispute. Any such request for a discovery

1 conference must describe the circumstances with specificity, set forth in detail
2 the reasons why the disclosure to the outside consultant or expert is
3 reasonably necessary, assess the risk of harm that the disclosure would entail,
4 and suggest any additional means that could be used to reduce that risk. In
5 addition, any such request must be accompanied by a competent declaration
6 describing the Parties' efforts to resolve the matter by agreement (i.e., the
7 extent and the content of the meet and confer discussions) and setting forth
8 the reasons advanced by the Designating Party for its refusal to approve the
9 disclosure. In any such proceeding, the Party opposing disclosure to the
10 outside consultant or expert shall bear the burden of proving that the risk of
11 harm that the disclosure would entail (under the safeguards proposed)
12 outweighs the Receiving Party's need to disclose the Protected Material to its
13 outside consultant or expert.

14 **Disclosure of Discovery Materials Designated as**
15 **"CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES**
16 **ONLY" to the Courts**

17 23. All Discovery Material designated as "CONFIDENTIAL" or
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" submitted to
19 the Court in this Action for consideration in relation to a motion shall be
20 lodged under seal, in compliance with the Federal Rules of Civil Procedure
21 and the Local Rules. Prior to filing such Discovery Material in this Action,
22 the Party desiring to file such Discovery Material may request that the
23 designating Party agree that such materials be de-designated as
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
25 EYES ONLY," and the designating Party shall in good faith agree to such de-
26 designation if such materials may be filed without being lodged under seal
27 without prejudice to the designating Party.

1 24. All Discovery Material designated as “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may only be
3 submitted to the Court or otherwise used or relied upon in the UK Proceeding
4 in relation to a motion, hearing, trial, or any other matter open to the public on
5 the condition that the Discovery Material is not disclosed to the public and
6 confidentiality is maintained except where there is prior written agreement of
7 the Parties or Order of the UK Court to the contrary. Prior to filing such
8 Discovery Material or using such Discovery Material in the UK Proceeding,
9 the Party desiring to file or use such Discovery Material may request that the
10 designating Party agree that such materials be de-designated as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY,” and the designating Party shall in good faith agree to such de-
13 designation if such materials may be filed or used without restriction without
14 prejudice to the designating Party.

15 25. No Discovery Material designated as “CONFIDENTIAL” or
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be
17 submitted in the EPO Proceeding or otherwise used or relied upon in the EPO
18 Proceeding in relation to a hearing or any other matter open to the public,
19 without obtaining advanced written assurance from the EPO that such
20 information will be kept confidential and not disclosed in any manner to the
21 public. Except, a Party desiring to file or use such Discovery Material in the
22 EPO Proceeding may request that the designating Party agree that such
23 materials be de-designated as “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and the designating
25 Party shall in good faith agree to such de-designation unless the Party
26 reasonably believes their disclosure will have an adverse business or
27 competitive impact on the designating Party. Such materials may then be filed

1 without being lodged under seal or used without restriction in the EPO
2 Proceeding without prejudice to the designating Party.

3 **Disclosure to Author or Recipient**

4 26. Notwithstanding any other provisions of this Stipulation and Protective
5 Order, nothing herein shall prohibit counsel for a Party from disclosing
6 information or Discovery Material to any person whom the particular item of
7 information or Discovery Material clearly identifies as an author, addressee,
8 or copy recipient of the particular item of Discovery Material; and, regardless
9 of designation pursuant to this Stipulation and Protective Order, if a document
10 or testimony makes reference to the actual or alleged conduct or statements of
11 a person who is a potential witness, counsel may discuss such conduct or
12 statements with such witness without revealing any portion of the information
13 or Discovery Material other than that which specifically refers to such
14 conduct or statements, and such discussion shall not constitute disclosure
15 within the terms of this Stipulation and Protective Order.

16 **Disclosure Pursuant to Subpoena or Other Compulsory Process**

17 27. If a receiving Party receives a subpoena or other compulsory process
18 commanding the production of information or Discovery Material designated
19 as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
20 EYES ONLY," that Party shall promptly notify the designating Party. The
21 Party receiving the subpoena or compulsory process shall not produce any
22 such information or Discovery Material in response to the subpoena without
23 providing the designating Party reasonable notice so that Party can object to
24 the disclosure if it chooses. The Party receiving the subpoena or other
25 compulsory process shall not object to the designating Party having a
26 reasonable opportunity to appear in the litigation or process seeking
27 disclosure of information or Discovery Material designated as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY,” for the sole purpose of seeking to prevent or restrict
3 disclosure thereof. The Party receiving the subpoena or other compulsory
4 process shall cooperate with respect to all reasonable procedures sought to be
5 pursued by the Designating Party whose Discovery Material may be affected.

6 **Additional Protections**

7 28. This Stipulation and Protective Order shall not preclude any Party from
8 seeking and obtaining, on an appropriate showing, such additional protection
9 with respect to the confidentiality of documents or other discovery material as
10 they may consider appropriate.

11 **Challenge to Confidentiality Designation**

12 29. This Stipulation and Protective Order shall not preclude any Party from
13 (i) claiming that any matter designated hereunder is not entitled to the
14 protections of this Stipulation and Protective Order; (ii) applying to the Court
15 for an order permitting the disclosure or use of information or documents
16 otherwise prohibited by this Stipulation and Protective Order; or (iii) applying
17 for an order modifying this Stipulation and Protective Order in any respect.

18 30. No Party shall be obligated to challenge the propriety of any
19 confidentiality designation, and failure to do so shall not preclude a
20 subsequent attack on the propriety of such designation.

21 **Prior Public Knowledge**

22 31. This Stipulation and Protective Order shall not apply to any
23 information or Discovery Material that, prior to disclosure, is public
24 information or knowledge, and the restrictions contained in this Stipulation
25 and Protective Order shall not apply to information and Discovery Material
26 that are, or after disclosure become, public knowledge other than by an act or
27 omission of the Party or others subject to this Stipulation and Protective Order

1 to whom such disclosure is made, or that is legitimately and independently
2 acquired from a source not subject to this Stipulation and Protective Order.

3 **Return of Designated Information**

4 32. Within forty-five (45) days of the final disposition or resolution of the
5 latter occurring disposition between the UK Proceeding and the EPO
6 Proceeding, including all appeals and further petitions related to such
7 proceedings, each Party shall either (i) assemble and return all information
8 and Discovery Material designated "CONFIDENTIAL" or "HIGHLY
9 CONFIDENTIAL – ATTORNEYS' EYES ONLY," including all copies, to
10 the Party from whom the designated material was obtained or (ii) destroy all
11 such information and Discovery Material, at the option of the Party in
12 possession thereof.

13 33. Notwithstanding the foregoing, outside counsel of record for each Party
14 may retain for its archives (i) one full set of copies of all pleadings, affidavits,
15 declarations, briefs, memoranda, expert reports, and exhibits and other papers
16 filed in this Action; (ii) one set of transcripts of all testimony taken at any
17 depositions, hearings or trial (with exhibits); and (iii) all of its own work
18 product generated in connection with the UK and EPO Proceedings or this
19 Action.

20 34. Any such materials that are not returned or destroyed shall remain
21 subject to this Stipulation and Protective Order, and the Court shall retain
22 jurisdiction to ensure that the terms hereof are not violated.

23 **Modification, Waiver or Termination of Stipulation and Order**

24 35. No part of the restrictions imposed by this Stipulation and Protective
25 Order may be modified, waived, or terminated, except by the written
26 stipulation executed by counsel of record for each Party, or by an Order of the
27 Court for good cause shown.

No Limitation on Providing Advice to Client

36. This Stipulation and Protective Order shall not bar any attorney herein in the course of rendering advice to his or her client with respect to this litigation from conveying to any Party client his or her evaluation in a general way of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" material produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his or her Party client, the attorney shall not disclose the specific contents of such material, which disclosure would be contrary to the terms of this Stipulation and Protective Order.

Headings

37. The headings in this Stipulation and Protective Order are for convenience only and are not intended to affect or alter the text of the paragraphs or the substance of this Stipulation and Order.

IT IS SO ORDERED.

DATED: 6/2/2016

Alicia L. Rosenberg

UNITED STATES MAGISTRATE JUDGE

1 Dated: June 1, 2016

MURPHY & KING, P.C.

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By: /s/ Peter C. Obersheimer

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Germain D. Labat

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Allison W. Meredith

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Theodore J. Folkman (Pro Hac Vice)

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Peter C. Obersheimer (Pro Hac Vice)

9

Attorneys for Applicants

PHILIP MORRIS PRODUCTS S.A. and

NICOCIGS LIMITED

10

11 Dated: June 1, 2016

PERKINS COIE LLP

12

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By: /s/ Joseph P. Hamilton

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Attorneys for FONTEM VENTURES

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B.V. and FONTEM HOLDINGS 1

25

B.V.

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1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3

4 IN RE: APPLICATION OF PHILIP
5 MORRIS PRODUCTS S.A. and
6 NICOCIGS LIMITED FOR
7 ISSUANCE OF SUBPOENAS TO
8 FONTEM HOLDINGS 1 B.V.,
9 FONTEM VENTURES B.V., NJOY,
INC. and SPARK INDUSTRIES, LLC.

Case No. 2:16-mc-00005-PA-AGR

**STIPULATED PROTECTIVE
ORDER**

Hon. Alicia G. Rosenberg

11
12 1. I have received a copy of the Stipulation and Protective Order (the
13 "Order") entered by the United States District Court for the Central District of
14 California (the "Court") in the above-referenced action. I have carefully read
15 and understand all of the provisions of the Order.

16 2. I agree to be bound by all of the provisions of the Order. I will hold in
17 confidence, will not disclose to anyone other than those persons specifically
18 authorized by the Order, and will not copy or use except for purposes of this
19 action, any information designated as "CONFIDENTIAL" or "HIGHLY
20 CONFIDENTIAL – ATTORNEYS' EYES ONLY" which I receive in this
21 action.

22 3. I understand that a violation of the Order ^{may be} ~~is~~ punishable by contempt of
23 Court, and I hereby consent to the jurisdiction of the Court for the purpose of
24 enforcing the terms and restrictions of the Order.
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AGF
STIPULATED PROTECTIVE ORDER

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Name (print): _____

Address: _____

Signature: _____ Date: _____